Number:

IN THE

Supreme Court of the United States

MOHAMMED HUSEIN BHADELIA

Petitioner

vs.

MARINA CLUB OF TAMPA,

HOMEOWNER'S ASSOCIATION, INC.,

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit
Court of Appeals Number: 05-11292-II

PETITION FOR A WRIT OF CERTIORARI

Mohammed Husein Bhadelia, Pro se
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Petitioner

QUESTIONS PRESENTED

Whether the Orders issued by the United States District Court between August 23, 2004 (specifically on December 22, 2004) and February 24, 2005 had effectively stripped the District Court of Jurisdiction to enforce a Mediation Settlement Agreement which had not been entered by the District Court prior to the February 24, 2005 Evidentiary Hearing when the District Court on December 22, 2004 Specifically Ordered Continued Negotiations?

And, Did the United States Court of Appeals for the Eleventh Circuit err in that Unpublished Opinion which stated that the Mediation Hearing had successfully resolved all remaining issues on appeal without addressing the jurisdictional question presented within petitioner's appeal when the District Court had issued an Order on December 22, 2004 that the parties would meet face to face to resolve their differences and if the parties failed that the District Court would have "No Alternative But to Reopen the Case and Set for Immediate Trial"?

Did United States Court of Appeals for the 11th Circuit decide in opposition to all of the previous rulings of this Supreme Court since 1884 which have ruled under Article III that a Federal Court is required to act on it's own initiative and insure that proper jurisdiction exists.

The central question presented to this Supreme Court today is to clarify Jurisdiction of Court Ordered and Mandated Mediation? Mediation is an out of Court approved method of settling litigation. But, when the

agreement reached at a mediation conference is reneged or when negotiations continue past the original proposed agreement then the litigation has not received a final settlement. When the District Court on December 22, 2004 ordered continued negotiations then it is apparent that the agreement was not final. The District Court had by it's own order on December 22, 2004 expressed the Court's knowledge that the mediation process had failed, that the District Court had never entered any agreement as part of any order, and the District Court would have no alternative but to "Reopen the Case and Set for Immediate Trial on the Merits". Did the Evidentiary Hearing and the Entry of a Final Judgment Incorporating a Reneged and Still Pending Negotiation Agreement violate the Subject Matter Jurisdictional Clause of the United States Constitution, Article III and deny the petitioner of Due Process guaranteed under the 14th Amendment?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Eleventh Circuit.

The petitioner here and the appellants below are Mohammed Husein Bhadelia and Mohammed Farooq Bhadelia.

The appellees below and the respondents here are the Marina Club of Tampa Homeowner's Association, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states as follows:

Mohammed Husein Bhadelia is an individual and citizen of Karachi, Pakistan. Mohammed Farooq Bhadelia is an individual and citizen of Tampa, Hillsborough County, Florida.

Marina Club of Tampa Homeowner's Association, Inc. is a Not for Profit corporation established under Florida Statutes 718, consisting of members permitted under those by-laws of said corporation owning condominium units within the Marina Club of Tampa Condominium Complex.

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OPINIONS BELOW

The Eleventh Circuit Court of Appeals issued an Unp shed Opinion on July 27, 2005 with Mandate d Judgment Issuance date of August 31, 2005. A copy of that mandate with opinion is attached as Petitioner's Appendix .

JURISDICTION OF THIS COURT

The United States Court of Appeals for the Eleventh Circuit entered it's Judgment on August 31, 2005. The Supreme Court of the United Sates has jurisdiction under 28 U.S.C. 1254(1). This petition is timely filed.

PETITION FOR A WRIT OF CERTIORARI

COMES NOW, the petitioner, Mohammed Husein Bhadelia, pro se, in this request for this Writ of Certiorari stating that in all prior proceedings he has been represented by counsel and has prior to filing this petition terminated that representation of counsel, and offers the following facts and questions to this Supreme Court for review:

STATEMENT OF THE CASE

Petitioner on January 7, 1993, purchased from the United States Government, through a foreclosure sale during the Receivership of the Resolution Trust Corporation, a failed Condominium Development Project. Although, if this were a perfect world the petitioner would have immediately stepped forward and inserted a

large amount of money into a project that two prior developers had failed at, such an investment was not a requirement of the petitioner purchasing this property.

Instead, what the petitioner chose to do was concentrate on the sale of those finished units as the market improved and postpone new construction until a market existed. When the petitioner chose the business plan based upon his expertise and experience he was met by a disgruntled group of Condominium Owners who had purchased from prior developers. These disgruntled owners perceived that the petitioner was obligated to fulfill the promises made to them by prior developers. Such was not the case as the Resolution Trust Corporation had foreclosed prior to petitioner being in the picture at all. That act of foreclosure had terminated all of the previous developer's promises. The litigation below has ensued from that difference of opinions between petitioner and respondents.

QUESTIONS AS PRESENTED

Jurisdictional Question:

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375,377 (1994). Only two means exist by which the District Court may exercise jurisdiction to enforce a settlement agreement: (1) "by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement)" or (2) "by incorporating the terms of the settlement agreement in the order." Id. at 381; *American Disability Ass'n. Inc. v. Chmielarz*, 289 F.3d 1315, 1320(1 1'" Cir. 2002). The administrative order of dismissal in this case neither contained a retention of jurisdiction to

enforce settlement of the underlying action prior to actual entry of said agreement, nor incorporates or refers to terms of a settlement agreement.

Local Rule 3.08(b) of the Middle District of Florida permits a federal district court to administratively close a case "when notified that a case has been settled." In this case, the mediator advised that mediation was successful. None of the parties took issue with the mediator's representation. Thus, the record unequivocally shows that a settlement had been reached.

Local Rule 3.08(b) provides a vehicle by which a case may be removed from the trial docket after it is settled, even though the settlement documents or "a stipulated form of final order or judgment" may not have been signed by the necessary parties or the Court, respectively. During the time necessary for the parties to gather and submit the desired order or judgment to the Court for entry, jurisdiction continues in the District Court to hear the merits of the action set forth in the pleadings. Situations arise, although infrequently, in which settlement of the action is reneged or is otherwise not consummated, despite the parties' or mediator's notice to the Court that the case has settled. In that event, the Court will then place the case on the next available trial calendar to try the case pled, ***(Pt. App. Pages 13 & 14, D.C. Order, par. 3&4)*** not to hear argument regarding the enforcement of a settlement once thought to have been reached. Nothing in this record bestows jurisdiction on the District Court to enforce a settlement of the underlying action.

The District Court never reserved jurisdiction for purposes of enforcing a settlement agreement, and never entered an order approving, ratifying, or incorporating the terms of any

settlement. The remedy to enforce a settlement agreement is to file a separate action in state court absent an independent basis for federal jurisdiction.

When on ***February 7, 2005*** the District Court entered that Order which reopened the case and set an evidentiary hearing for February 24, 2005. The Court contradicted that Order issued on ***Dec. 22, 2004*** and did not have jurisdiction to enforce any settlement agreement which had not been entered and had clearly been reneged or otherwise not consummated, despite the parties' or mediator's notice to the Court that the case had settled.

What did occur was that a sanction was ordered which penalized the petitioner for the inability to obtain a visa to travel to the United States by February 24, 2005. Petitioner is not denying that the Court had justification to be perturbed and a right to issue sanctions. What the petitioner is stating is that the Court and the petitioner had relied upon the attorneys. That these attorneys representing both sides, as well as petitioner's own counsel, had failed in their duties to their clients and the Court is a clear fact. But, the parties individually did not fail the Court. Resolution of these issues requires this Court to balance the judicial system's need for an effective tool to discourage and punish misconduct with its need for appropriate restraint in imposing inherent power sanctions. Moreover, because the overriding purpose of the inherent power is "to achieve the orderly and expeditious disposition of cases," *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-3 1(1962), the use of this power should reflect our judicial system's strong presumption in favor of adjudication's on the merits, see, e.g., *Foman v. Davis*, 371 U.S. 178, 18 1-82 (1962); *Shea v.*

Donohoe Const. Co., 795 F.2d 1071, 1075 (D.C. Cm. 1986); *Aoude*, 892 F.2d at 1118; *Kauffmann v. Moss*, 420 F.2d 1270, 1276 (3d Cm.), cent. denied, 400 U .8. 846 (1970); *Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure:* Civil § 1357, at 599 & n.67 (1969)

Petitioners' request of the Supreme Court is grounded in two well-established principles of law. First, every court has "inherent" power to exercise its discretion to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants." Landis v. North American Co., 299 U.S. 248. 254 (1936): accord United States v. Western Electric Co.. Inc.. 46 F.3d 1198, 1207 n.7 (D.C. Cir. 1995) ("a trial court has inherent power to control the sequence in which it hears matters on it calendar ...").

Second, and perhaps more importantly, it has been long established that "the requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" Steel Co. v. Citizens for a Better Environment. 523 U.S. 83, 94-95 (1998) (emphasis added) (quoting Mansfield. C. & L.M. Rv. Co. v. Swan. 1 1 1 U.S. 379, 382 (1884)). The "first and fundamental" question for any court is that of jurisdiction. Steel Co., 523 U.S. at 94 (quoting Great Southern Fire Proof Hotel Co. v. Jones. 177 U.S. 449, 453 (1900)).

Thus, as the Supreme has recognized, "resolving a merits issue while jurisdiction is in doubt 'carries the court beyond the bounds of authorized judicial action'... and violates the principle that 'the first and fundamental question is that of jurisdiction.'" In re Minister Papandreou. 139 F.3d 247, 254-55 (D.C. Cir. 1998) (citations omitted): accord Ruhrgas AG v. Marathon Oil Co.. 526 U.S. 574, 583 (1999) ("Article